IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 01.02.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

Writ Appeal No.2932 of 2002

1.The Ex-Officio Secretary to
Government Co-operation,
Food and Consumer Protection
Department, Fort St. George,
Chennai-9.

2.The Collector of Trichy District.

3.The Taluk Supply Officer,
Manachanallur,
Trichy District. ... Appellants / Respondents

Vs.

S.M.Sheik Mohammed ... Respondent/ Petitionr

Writ appeal filed under Clause 15 of the Letters Patent against the order dated 24.09.1999 made in W.P.No.6328 of 1992. presented to this Court under Article 226 of the Cosntitution of India to issue a writ of certiorari calling for the records in G.O.Ms.No.140 dated 23.02.1989 Co-operation Food and consumer protection Department, Fort St. George, Madras-9, and quash the above G.O.Ms.No.140 dated 23.02.1989.

For Appellants : Mr.P.Subramanian,
Government Advocate
For respondent : No appearance

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JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above writ appeal is directed against the order dated 24.09.1999 made in W.P.No.6328 of 1992,` wherein the learned single Judge partly allowed the writ petition and reduced the fine

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amount imposed on the petitioner from Rs.25,364/- to that of Rs.1,000/-. In the same order, the learned single judge has permitted the writ petitioner to pay the said amount of Rs.1,000/- at the rate of Rs.200/- in five instalments with effect from November, 1999 onwards. Questioning the said order, the Government and their Officers have filed the above writ appeal.

2. Heard the learned Government Advocate for the appellants. No one appeared for the respondent.

3. It is seen that against the order of the District Collector, confiscating the entire 201 bags of paddy seized and imposing a fine of Rs.25,364/- on the owner of the lorry, in lieu of his confiscation, a joint appeal has been filed before the Government. By G.O.Ms.No.140, Co-operation, Food and Consumer Protection Department, dated 23.02.1989, the Government, after considering the claim of the parties

and after verifying the documents/materials and finding that the offence alleged i.e., the transport of paddy in a lorry is fully established and finding no reason to interfere with the decision of the Collector, has confirmed the order of the Collector, Trichirapalli and dismissed the appeal. Questioning the said order, the owner of the lorry bearing registration No.TNX 1305 has filed W.P.No.6328 of 1992 before this Court.

4. The learned single Judge, after finding that the petitioner is the first offender and in a case of this nature, the court has to take lenient view, has reduced the fine amount from Rs.25,364/- to Rs.1000/- and directed to pay the said amount in five equal instalments.

5. The learned Government Advocate appearing for the appellants submitted that inasmuch as the respondent transported paddy without a proper permit and taking note of all relevant aspects, the Original Authority, viz., District Collector, Trichirapalli, has imposed appropriate fine of Rs.25,364/-, which was confirmed by the Government, the learned single Judge ought not to have reduced the fine amount without any reason.

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6. We have perused the proceedings of the Collector, Trichirapalli dated 23.05.1988 as well as the order of the Government in G.O.Ms.No.140 dated 23.02.1989. I[t is not the case of the first respondent that he was not given an opportunity to putforth his case. On the other hand, the specific conclusion of the Original Authority viz., the District Collector, Trichirapally is that consequent to the introduction of monopoly trade in the entire Lalgudi Taluk all movements of paddy are restricted and regulated through the issue of movement authorisation by the

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T.S.O. in terms of Clause 3(1)(A) of the Tamil Nadu Paddy (Restriction on Movement) Order, 1982. It is noted by the District Collector, Trichirapalli, that the transport of paddy was not covered by such movement authorisation. Though Adangal extracts were produced, on verification, the Original Authority has concluded that in the absence of fasli numbers, the same cannot be accepted. The Original Authority has also not accepted the version of S.M.Shafiullah that the paddy seized was harvested from the respondent herein/petitioner's land at Mandurai Village, Lalgudi Taluk. As regards the lorry, the owner has stated before the District Collector, Trichirapalli that the paddy was transported by his driver without his consent and knowledge and he was not connected with the paddy seized. The Original Authority, after finding that there is no movement authorisation for transport of paddy or valid bills with the driver of the lorry, has concluded that the owner of the lorry is vicariously liable for action even if the offence is committed by his driver. The Original Authority has imposed a fine of Rs.25,364/-. This order was considered by the Government in detail. The Government has also considered the relevant fact that the driver has not made entries in the GVR with an intention to hush up hire charges which he would utilise for his personal benefits. In those circumstances, the Government accepted the conclusion of the District Collector, Trichirapalli and concluded that the lorry owner is vicariously liable for action of his driver in terms of Section 6B(2) of the Essential Commodities Act, 1955.

7. The relevant discussion and the ultimate conclusion of the Original as well as the Appellate authority clearly show that all the relevant aspects were duly considered and appropriate fine amount was imposed on the owner of the lorry. In such factual circumstance and materials, we are unable to accept the conclusion arrived at by the learned single Judge that merely because he is the first offender, he has to be dealt with leniently. On the other hand, we are in agreement with the conclusion arrived at by the Original and Appellate Authority and unable to accept the conclusion arrived at by the learned single Judge.

8. In these circumstance, the order of the learned single Judge dated 24.09.1999 made in W.P.No.6328 of 1992 is set aside and the writ appeal is allowed. No costs.

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Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Ex-Officio Secretary to
Government Co-operation,
Food and Consumer Protection
Department, Fort St. George,
Chennai-9.

2.The Collector of Trichy District.

3.The Taluk Supply Officer,
Manachanallur,
Trichy District.

1 cc to Government Pleader, Sr. 6123

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